



January 18, 2006

Leslie Smith
Federal Communications Commission
Room 1-A804
445 12th Street, S.W.
Washington, D.C. 20554

Re: Rules and Regulations Implementing the
Telephone Consumer Protection Act of 1991
CG Docket No. 05-338, 70 FR 75102 (December 19, 2005)

Dear Sir or Madam:

America's Community Bankers ("ACB")¹ is pleased to comment on the Federal Communication Commission's ("Commission") notice of proposed rule making to implement the Junk Fax Prevention Act of 2005 ("Junk Fax Act"). The ACB supports the Commission's amendment to its current rules recognizing the business relationship ("EBR") exemption of the Junk Fax Act and removal of the prior, signed and written consent requirement. ACB strongly recommends that the FCC not impose a limit on the duration of an EBR.

Background

The Junk Fax Act, signed into law on July 9, 2005, amended section 227 of the Communications Act of 1934 governing unsolicited facsimile advertisements. The Junk Fax Act directed the Commission to issue regulations to implement the amendments made by the Junk Fax Act, which included the addition of an EBR exemption to the prohibition on sending unsolicited facsimile advertisements. In the Junk Fax Act, Congress permits the Commission to limit the duration of an EBR if certain findings are made,

¹ America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit www.AmericasCommunityBankers.com.

including the number of complaints made by recipients to the Commission and the burden and costs to senders. The Commission has proposed a limit to the duration of the EBR of 18 months following a purchase or transaction and three months following an application or inquiry. We strongly recommend that no duration limit be imposed on EBR for the following reasons.

ACB's member banks originate a substantial portion of all mortgages in the United States as well as operate a large number of mortgage banking affiliates. In conducting this business, ACB members rely on facsimiles to communicate with their business partners, which include mortgage brokers, loan correspondents, real estate brokers, homebuilders, mortgage insurance companies, hazard insurance companies, out source service providers, appraisers, title insurance companies, real estate settlement providers and other providers of real estate services.

In addition, ACB members use facsimiles extensively in their wholesale lending operations to distribute interest "rate sheets" to the mortgage brokers and correspondent lenders that bring them loans. Some ACB members fax "rate sheets" to over 1500 mortgage brokers who have requested such information. Mortgage lenders provide mortgage brokers and correspondents with up to date information about products they are willing to purchase or fund and at what prices. These "rate sheets" list the full range of loan products mortgage lenders are willing to purchase or fund and at what prices. Mortgage brokers and correspondents quote rate and product information to real estate brokers and homebuilders who in turn provide the information to consumers.

A broker does not necessarily deliver a consistent flow of mortgage products to each wholesale lender with which it does business. Brokers seek out the best price and products from hundreds of wholesale lenders. Therefore, it is common for a broker not to deliver a loan to a specific wholesale lender for over a year or more if that lender's prices or products are not competitive, or do not address needs in that particular broker's market. The mortgage broker lists as well as the rates change frequently. EBR through the use of facsimile is the best method for providing this information as it changes.

ACB Position

ACB strongly urges the FCC not to impose limits on EBR duration for unsolicited facsimile advertisements. A duration limit would significantly and unnecessarily impede the flow of important information and products between ACB members, their mortgage lender affiliates and the institutions with which they do business, and in turn to consumers. Under any set time limit, due to volume alone, it will be difficult to track the last transaction

consummated with a broker or last transaction inquiry made by a correspondent.

Every bank or mortgage broker that sends faxes with advertising content will have to keep detailed and continuously updated records of their business partners' or customers' last inquiries and transactions. The ability of lenders to keep track of the EBR status of each recipient is overwhelming and would require the development of sophisticated databases for tracking the last loan delivery or inquiry made. To comply, small lenders would be subject to manual review of brokers' EBR status prior to each daily fax. This option is simply not cost effective or practical. The availability of personnel to check on the EBR status of business partners will be difficult and interfere with the lenders' ability to make loans. This results in a significant burden on community banks resources.

The free flow of product and pricing information, via facsimile, has led to an efficient and effective operation of the mortgage business and has made mortgage financing easily accessible and affordable to consumers. An EBR is a business-to-business relationship for both senders and recipients. Placing a duration limit on the EBR will harm businesses, and ultimately the consumers they serve.

Conclusion

ACB appreciates this opportunity to comment on this important matter and looks forward to working with the Commission to develop final rules that do not unnecessarily and unduly restrict community banks from conducting important lending and other financial services activities. Should you have any questions about our recommendations, please contact the undersigned at (202) 857-3186 or via e-mail at slachman@acbankers.org.

Sincerely,

A handwritten signature in cursive script that reads "Sharon H. Lachman".

Sharon Lachman
Regulatory Counsel